



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

OBJECTION TO AN  
APPURTENANT RIGHTS CLAIM

Form APRT-OBJ

For Official Use Only: WATER  
PERMIT

2012 SEP 21 PM 1:22

**Instructions:** Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

**A. OBJECTOR**

NAME/COMPANY

Wailuku Water Company, LLC

Contact Person

Avery B. Chumbley

Mailing Address

P. O. Box 2790, Wailuku, Hawaii 96793

Phone

808/244-7079

Fax

808/242-7968

E-mail Address

abc@aloha.net

**Explain your legal or material interest in objecting to this Appurtenant rights claim.**

Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.

**B. APPLICANT (As listed in the Public Notice)**

NAME/COMPANY

Hooululahui LLC J. Duey  
575-A Iao Valley Road

se Permit Application No.

Mailing Address

Wailuku, HI 96793  
SWUPA# 2243/2244N

Identify all Tax Map Keys (TMK) rel:

TMK: (2)3-5-003-018

**C. REASON(S) FOR OBJECTION**

Select all that apply below. The objector has the burden of proof on all objections.

☐ The parcel was not used as a residence or for cultivation at the time of the Mahele.

☒ The Appurtenant right to water has been reserved or extinguished.

☒ There are materially false statements or representations in the claimant's application for Appurtenant rights.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed):

The claim must be reviewed in light of the following:

1-Whether the claim properly characterized the source of the water for which the claim is asserted;

2-Whether the rights claimed are subject to Public Utilities Commission Regulation; and

3-Whether the rights have been extinguished.

See the attached sheets which expand on the objections and provide documentary support for the objection(s).

**Supporting documentation / evidence must be provided on separate sheets.**

**D. OBJECTOR SIGNATURE**

☐ By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.

Print Name:

Avery B. Chumbley,  
Authorized Representative

Signature:

Date:

September 18, 2012

OFFER 03650-6  
SWUPA-2243/2244  
10125

Form APRT-OBJ 08/29/2012

### **Whether the Claim Properly Characterized The Source of Water**

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

**Rights Claimed May be Subject to Public Utilities Commission Regulation**

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

### **Were Appurtenant Water Rights Extinguished**

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.

R-40

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

DEC 10, 2001 08:01 AM

Doc No(s) 2001-191788

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES  
CONVEYANCE TAX: \$150.00

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (✓) Pickup ( ) To:

FINANCE MORTGAGE, LTD.  
1164 BISHOP ST STE 400  
HONOLULU, HI 96813

TG: 200154616-B  
TGE: 399139  
A12011094  
GWENDOLYN M. VIDA

Tax Key: (2) 3-5-003-018

Total No. of Pages: 10

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is P. O. Box 1826, Papaikou, Hawaii 96781-1826, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by JOHN V. DUEY and ROSE MARIE DUEY, husband and wife, whose address is 575-A Iao Valley Road, Wailuku, Maui Hawaii 96793, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant, convey, release and forever quitclaim unto the said Grantee, as tenants by the entirety with full rights of

survivorship, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

EXCEPTING AND RESERVING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operation, the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other

nuisances to be discharged or emitted over and upon the Property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, his heirs, personal representatives, and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal and State environmental and agricultural laws and regulations, and Grantee, his heirs, personal representatives, and assigns, shall indemnify and hold Grantor, its successors and assigns, harmless from any liability or expense resulting from such claims arising from such nuisance whether made by Grantee or guests or other persons using the Property.

EXCEPTING AND RESERVING, FURTHER, unto Grantor, its successors and assigns, watercourse easement(s) of such character and sufficient size as Grantor, its successors and assigns, may establish for the flowage and direction of water or water-suspended material or the flotation of other objects upon, through, along and over the Property in such location as shall be mutually agreed in writing from time to time, including the right to construct, maintain, operate, repair or remove improvements in connection with said easement(s) and together with such rights of way for ingress and egress as shall be reasonably necessary in connection herewith.

TO HAVE AND TO HOLD the same, together with all buildings and other improvements, rights, easements, privileges

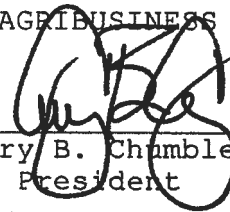
and appurtenances thereon or thereunto belonging or in anywise appertaining or held and enjoyed therewith, unto the said Grantee, forever.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

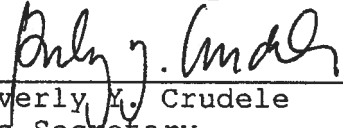
IN WITNESS WHEREOF, the Grantor has executed these presents on this 16<sup>th</sup> day of November, 2001.

WAILUKU AGRIBUSINESS CO., INC.

By

  
Avery B. Chumbley  
Its President

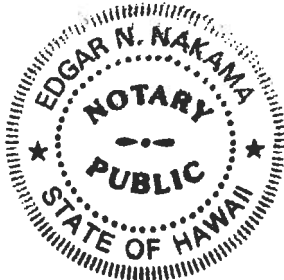
By


  
Beverly Y. Crudele  
Its Secretary



STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF MAUI                    )

On this 30<sup>th</sup> day of November, 2001, before me appeared **AVERY B. CHUMBLEY**, to me personally known, who being by me duly sworn or affirmed, did say that he is the **President** of **WAILUKU AGRIBUSINESS CO., INC.**, a Hawaii corporation, and that the instrument was signed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

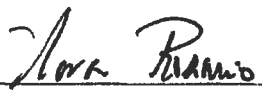



  
Name: Edgar N. Nakama  
Notary Public, State of Hawaii

My commission expires: **JUN 17 2004**

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HAWAII                )

On this 16<sup>th</sup> day of November, 2001, before me appeared **BEVERLY Y. CRUDELE**, to me personally known, who being by me duly sworn or affirmed, did say that she is the **Secretary** of **WAILUKU AGRIBUSINESS CO., INC.**, a Hawaii corporation, and that the instrument was signed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

   
\_\_\_\_\_  
Name: NORA ROSARIO  
Notary Public, State of Hawaii

My commission expires: 12-13-2002

EXHIBIT "A"

All of that certain parcel of land situated on the northerly side of Iao Valley Road at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being portions of R. P. 494, L.C. Aw. 2610 to Pehu; Grant 3343 to Claus Spreckels; R.P. 4059, L.C. Aw. 3529:2 to Hana; R.P. 3956, L.C. Aw. 3536 to Kuahine; and all of R.P. 4059, L.C. Aw. 3529:3 to Hana, being LOT 1 of IAO DOJO SUBDIVISION, and thus bounded and described as per survey of Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597, dated November 30, 2001:

Beginning at a point at the southeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 1,016.70 feet North and 10,747.78 feet West and running by azimuths measured clockwise from true South:

1. Thence along the remainder of Grant 3343 to Claus Spreckels, being also along Lot 3 of Iao Dojo Subdivision on a curve to the right with the point of curvature azimuth from the radial point being:  $06^{\circ} 07' 19''$ , and the point of tangency azimuth from the radial point being:  $09^{\circ} 52'$ , having a radius of 929.93 feet, the chord azimuth and distance being:  $97^{\circ} 59' 39.5''$  60.77 feet to a point;
2.  $99^{\circ} 52'$  132.61 feet along the remainders of Grant 3343 to Claus Spreckels and R.P. 494, L.C. Aw. 2610 to Pehu, being also along Lot 3 of Iao Dojo Subdivision to a point;
3. Thence along the remainder of R.P. 494, L.C. Aw. 2610 to Pehu, being also along Lot 3 of Iao Dojo Subdivision on a curve to the left having a radius of 741.20 feet, the chord azimuth and distance

being: 89° 34' 30"  
264.84 feet to a point;

4. 79° 17' 291.20 feet along same to a point;
5. Thence along same on a curve to the right having a radius of 1,383.22 feet, the chord azimuth and distance being: 87° 33' 30" 398.16 feet to a point;
6. 95° 50' 147.71 feet along same to a point;
7. 176° 30' 354.63 feet along the remainders of R.P. 494, L.C. Aw. 2610 to Pehu, R.P. 4059, L.C. Aw. 3529:3 to Hana, and Grant 3343 to Claus Spreckels, being also along Lot 1 of Iao Dojo Subdivision to a point;
8. 81° 00' 151.91 feet along the remainder of Grant 3343 to Claus Spreckels, being also along Lot 2 of Iao Dojo Subdivision to a point;
9. Thence along same on a curve to the left having a radius of 425.00 feet, the chord azimuth and distance being: 61° 56' 277.67 feet to a point;
10. 42° 52' 88.58 feet along same to a point;
11. 47° 00' 306.98 feet along same to a point;
12. 124° 50' 148.23 feet along the remainder of Grant 3343 to Claus Spreckels, being also along Lot 3 of Iao Dojo Subdivision to a point;
13. 227° 09' 30" 250.99 feet along the remainders of Grant 3343 to Claus Spreckels and R.P. 3956, L.C. Aw. 3536 to Kuahine to a point;

14.	230°	10'	110.30 feet along same to a point;
15.	206°	37'	92.05 feet along the remainder of R.P. 3956, L.C. Aw. 3536 to Kuahine to a point;
16.	215°	53'	156.32 feet along the remainders of R.P. 3956, L.C. Aw. 3536 to Kuahine and Grant 3343 to Claus Spreckels to a point;
17.	288°	06'	112.67 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
18.	237°	00'	75.01 feet along same to a point;
19.	226°	00'	80.00 feet along same to a point;
20.	247°	00'	100.00 feet along same to a point;
21.	263°	00'	50.00 feet along same to a point;
22.	283°	00'	200.00 feet along same to a point;
23.	264°	00'	105.00 feet along the remainders of Grant 3343 to Claus Spreckels and R.P. 4059, L.C. Aw. 3529:2 to Hana to a point;
24.	285°	30'	115.00 feet along the remainder of R.P. 4059, L.C. Aw. 3529:2 to Hana to a point;
25.	289°	00'	175.00 feet along the remainders of R.P. 4059, L.C. Aw. 3529:2 to Hana and Grant 3343 to Claus Spreckels to a point;
26.	267°	00'	200.00 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
27.	245°	00'	100.00 feet along same to a point;

28. 252° 00' 120.00 feet along same to a point;  
29. 257° 00' 70.00 feet along same to a point;  
30. 278° 00' 325.93 feet along same to a point;  
31. 3° 51' 479.47 feet along R.P. 7299, L.C. Aw.  
4452 Ap. 6 to H. Kalama to  
the point of beginning and  
containing an area of 18.146  
acres.

SUBJECT, HOWEVER, to all encumbrances of record, if  
any, as of the date of recording of this instrument in the said  
Bureau of Conveyances of the State of Hawaii.

END OF EXHIBIT "A"

Tax Key: (2) 3-5-003-018